BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE
NO. 02-466, JUDGE JOHN RENKE, III SC03-1846

TRIAL BRIEF ADDRESSING
SECOND AMENDED FORMAL CHARGE VIII

COMES NOW Respondent, **JUDGE JOHN RENKE, III**, by and through his undersigned counsel, and hereby files this, his Trial Brief Addressing Second Amended Formal Charge VIII, and states the following:

FACTS

1. Second Amended Formal Charge VIII alleges that the $95,800.00 in reported loans to the judicial campaign were not Judge Renke's "legitimately earned funds but were in truth contributions to [his] campaign from John Renke, II (or his law firm) far in excess of the $500 per person limitation on such contributions imposed by controlling law."

2. On May 15, 2002, the judicial campaign accepted $6,000.00, identified as a loan from John Renke, III.

3. On June 19, 2002, the judicial campaign accepted $40,000.00, identified as a loan from John Renke, III.

4. On September 5, 2002, the judicial campaign accepted $49,800.00, identified as a loan from John Renke, III.

5. These three loans totaling $95,800.00, predominantly funded Judge Renke's judicial campaign.

6. John Renke, III, had worked as an attorney in his father's law firm on an independent contract basis since shortly after graduating law school in 1995 until he was elected judge in 2002.

7. Because the law firm was small and not exceedingly profitable, both agreed that Judge Renke would receive minimal regular compensation ranging from between about $400 to $480 weekly, and periodic payments representing a percentage of fees earned in certain cases.

8. Although there was no written agreement, father and son evaluated the appropriate fee split and agreed that Judge Renke would receive 20% of attorney fees collected by the firm on cases bringing in approximately $10,000 or more in attorney fees; and if he brought in the client, he would receive nearly 100% of the fee, less firm costs and expenses.

9. Both father and son anticipated that the law firm would eventually belong to the son. Judge Renke accepted a low compensation arrangement, and one that required him to pay self-employment taxes, because he understood that, one day, he would take over his father's firm.

10. From 1995 through 2002, Judge Renke's sole source of earned income was his full time work in his father's law firm. Judge Renke's self-

employment taxable income derived therefrom, as reported on Schedule C of his Federal Income Tax returns was as follows:

1995	$ 10,941
1996	16,020
1997	18,608
1998	15,328
1999	11,480
2000	12,682
2001	35,987
2002	140,116

Tax records for 1995 through 2001, all filed long before Judge Renke contemplated running for judge, support the testimony that Judge Renke was working for low pay with the aspiration of growing and one day taking over his father's firm.

11. John Renke II was self-admittedly a "tough employer" and negotiations with his son regarding the amount of shared fees was a source of disputes.

12. John Renke II was not able to pay his son what he was worth in terms of what he was working on most of the time particularly on the huge, complex cases that had been ongoing for seven years before the firm received any significant fees. According to John Renke II, his son trusted that he would eventually be paid a portion of those fees after they were received.

13. Gross receipts reported on Schedule C of John Renke II's Federal Income Tax Returns for 1998 through 2002, show that the law firm was small and with relatively low fee income:

1998	$ 139,247
1999	166,977
2000	97,116
2001	260,761
2002	296,682

14. In addition to Judge Renke, the law firm utilized the services of one other attorney, Thomas Gurran, who also worked as an independent contractor and who was compensated on an hourly basis, and with discretionary bonuses. Mr. Gurran had developed significant health problems and required a more fluid work schedule with flexible hours. Mr. Gurran's compensation plan was negotiated separately between John K. Renke, II and Mr. Gurran.

15. A significant increase in the firm's gross receipts from 2000 to 2001, was largely attributable to a check dated March 27, 2001, for fees of $123,553.05 received from Chubb on behalf of its insured, Timber Oaks Community Association, in litigation loosely referred to in these proceedings as the *Driftwood* cases. The litigation involving these related cases had been ongoing for several years and was not formally finalized

until the summer of 2002, with final fees of $97,103.54 not received by the law firm until September 2003.

16. Judge Renke worked extensively on the *Driftwood* cases and his contributions were crucial to the ultimate recovery of substantial fees for the firm. In addition to maintaining ongoing client communication, Judge Renke researched and drafted documents, prepared memorandums of law, engaged in discovery, met with clients and appeared along side his father at any required court appearance or mediation in these and other cases.

17. From February 12, 2002, through December 24, 2002, John Renke II and his law firm paid in excess of $140,000.00 in shared fee compensation to Judge Renke, $101,800.00 of which represented his share, approximately 45% of the total *Driftwood* fees, net of costs.

18. Judge Renke was never the subject of any criminal investigation or prosecution regarding any alleged illegal campaign contributions.

ARGUMENT

At the outset, allegations contained in Second Amended Formal Charge VIII were peripherally considered at the April 2003 Rule 6(b) hearing. The resulting Notice of Formal Charges, which set forth allegations that the Investigative Panel determined were supported by probable cause pursuant to Rule 6(f), contained no charge regarding any improper campaign

contribution. Second Amended Formal Charge VIII was not filed until February 16, 2005, well after an April 7, 2004 Stipulation was rejected by the Florida Supreme Court on July 8, 2004. The charge was added without affording Judge Renke the opportunity to adequately defend himself at a probable cause hearing and without reviewing any documents, such as the checks paid, or without interviewing any of the people who worked at the law office, including John K. Renke, III, Thomas Gurran, or Margaret Renke, who was the office manager.

In order to prevail on Second Amended Formal Charge VIII, the JQC bears the heavy burden of proving by clear and convincing evidence that payments Judge Renke received in 2002 from his father's law firm, at which he had worked as an independent contractor for nominal pay since 1995, were not to compensate him for services rendered.

Special Counsel has the burden of proving any violations of the charged Judicial Canons by clear and convincing evidence. Florida courts define the term 'clear and convincing evidence' as follows:

> [T]he evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

The JQC relies heavily on circumstantial evidence to support its claim that Judge Renke did not "legitimately earn" the income he received in 2002. Admittedly, that compensation was considerably more than Judge Renke had received in prior years, and the timing of most of the payments coincided with Judge Renke's loan contributions to his campaign. Mere timing does not, however, transform legitimate earnings into nefarious campaign contributions. In this case, the payments to Judge Renke were to compensate him for services rendered, and they did not suddenly become illegal campaign contributions based on when they were paid. The JQC cannot merely rely on the source and timing of those payments to meet its burden of proof, any more than the Board in the Pennsylvania case of In the Matter of Dalessandro, Judge of Court of Common Pleas, Luzerne County, 483 Pa. 431 (Pa. 1979), could meet its burden in that case.

In Dalessandro, the Supreme Court of Pennsylvania exonerated a judge of charges that when he was a judicial candidate he solicited and received a $35,000 illegal campaign contribution from a family owned corporation. Dalessandro had requested that the corporation repay a loan he

had made to the company so that he could meet certain expenses involving his candidacy for judge. Id. at 438. The Board was unable to prove that the money did not belong to Dalessandro, even though it found the timing and source of the funds he contributed to his campaign suspicious.

In this case, Judge Renke did not invest money in the form of loans to his father's law firm, but he undeniably invested years of labor for which he was underpaid. Judge Renke saw the financial sacrifices made during the first seven years of his career as an investment in the future, because he believed that he would one day take over his father's firm. There is no evidence that Judge Renke did not earn the income he received. There was nothing improper about John Renke II exercising his discretion to finally compensate his son in 2002, for work he had performed throughout the years. John Renke II relinquished his control over those funds when he disbursed them to his son, who was then at liberty to use them as he chose: to fund his judicial campaign. The money paid to his son as compensation was reported by both John K. Renke, II, and reported by Judge Renke as compensation before any charge was ever made that the funds were not "legitimately earned."

The final income payments Judge Renke received were close in time to the finalization of the *Driftwood* cases in the summer of 2002. Judge

Renke and his wife had long been expecting and anticipating a large portion of the fees from those cases, as the firm had already received a partial payment of $123,553.05 in March 2001. As the primary financial supporter of his family of four, Judge Renke had decided to leave his father's firm rather than continue earning such a low income with the prospect of one day taking over the firm. Knowing he was owed substantial fees from the *Driftwood* cases on which he had worked for several years, Judge Renke and his wife considered their options.

Judge Renke explored other employment opportunities and he and his wife seriously considered using the expected income to purchase a larger home. In the end, Judge Renke's wife cast the deciding vote. The new house could wait. The couple would use Judge Renke's final compensation from the law firm to fund his judicial campaign in 2002.

The JQC's suggestion that Judge Renke did not work on the *Driftwood* cases and on other law firm files is contrary to the evidence and wholly without merit. That Judge Renke was not lead counsel and did not sign pleadings he drafted in these cases is of no import. It is both common legal practice and appropriate for a senior named partner in a law firm to assume the role of lead counsel and to sign pleadings that are nearly exclusively researched and drafted by a subordinate or contract attorney.

There is no Rule Regulating The Florida Bar that prohibits the compensation arrangement Judge Renke had with his father. Compensation paid is entirely discretionary, and may be paid to lawyers based on fees or on extraordinary efforts in a single case or over time. There is no requirement that compensation be linked to any particular case or fees earned by the firm. The JQC cannot meet its burden of proof to support any violation of the Judicial Canons and therefore, the Hearing Panel should enter a not guilty finding as to Second Amended Charge VIII.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of September, 2005, the original of the foregoing Trial Brief Addressing Second Amended Formal Charge VIII has been furnished by electronic transmission via e-file@flcourts.org and furnished by FedEx overnight delivery to: Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; and true and correct copies have been

furnished by hand delivery to Judge James R. Wolf, Chairman, Hearing Panel, Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; Marvin E. Barkin, Esquire, and Michael K. Green, Esquire, Special Counsel, 2700 Bank of America Plaza, 101 East Kennedy Boulevard, P. O. Box 1102, Tampa, Florida 33601-1102; Ms. Brooke S. Kennerly, Executive Director, Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; John R. Beranek, Esquire, Counsel to the Hearing Panel, P.O. Box 391, Tallahassee, Florida 32302; and Thomas C. MacDonald, Jr., Esquire, General Counsel, Florida Judicial Qualifications Commission, 1904 Holly Lane, Tampa, Florida 33629.

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